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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,504	05/25/2001	David Funk	45295/AAM/C664	4457

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EXAMINER

REID, CHERYL M

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/866,504

Applicant(s)

FUNK, DAVID

Examiner

Cheryl M. Reid

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/29/01
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. Claims 1-11 have been examined.
2. Claim 11 is objected to because of the following informalities: Claim 11 states that " An optical network comprising one or more optical network elements as defined in any one of claims 1 to 19" It should be noted that there is no claim 19. Examiner assumed that applicant intended to write Claim 10. Claim 11 is interpreted using this assumption. Appropriate correction is required.
3. Applicant is advised that there is a minor-informality with spelling. Throughout the document , applicant has "recognises" instead of "recognizes". Proper correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1, 2, 5, 9 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Kanekar.

Claim 1

Kanekar teaches about a management unit for receiving a management signal, wherein the management unit comprises at least two substantially identical management components (Col 6, lines 1-7), each management component arranged, in use, to independently receive and process the management signal (Col 7, lines 20-23) in a manner such that, in use, the processing conducted by one of the components recognizes if a management task associated with the received management signal is executed by the other component, whereby double execution of the task is being avoided (Col 7, lines 50-53, Col 8, lines 17-19). Management is defined as managing. Managing is defined as to handle or direct with a degree of skill. Examiner is interpreting management signal as any signal that is handled or directed because this gives the broadest reason of interpretation. The recitation optical network element has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190

USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Claim 2

5. Kanekar teaches that the management task comprises the distribution of one or more of the group of alarm reports, audit logs, alarm logs, status reports and control messages (Col 7, lines 23-27). "Hello" communicated between routers is considered a control message because it communicates to routers if there is a failure and action is taken by standby router depending on the existence or absence of the "hello" message.

Claim 5

6. Kanekar teaches about the network element comprises a network node or an in-line amplifier (Fig 1).

Claim 9

7. Kanekar teaches about the management components (routers) are each arranged in a manner such that an electronic tag (Col 7, lines 62-64) associated with the management signal is stored at a data storage unit (routers, it is well known in the art that routers consist of method to store data) of a particular destination object which is the subject of a particular management task, whereby the data storage unit (router) recognizes that the particular management signal has been acted upon to avoid

duplication of the management task (Col 7 lines 25-28). Tag is defined as characters containing information about a file or record type. Examiner is interpreting “electronic tag” as any “electronic” information that relates to the management signal because this gives the broadest reason of interpretation.

Claim 10

Kanekar teaches about the steps of receiving and processing a management signal in parallel in at least two independent processes (Col 7, lines 49-50, Col 8, line15 Col 2, lines 59-61) (Fig 5) and in a manner such that one of the parallel processes conducted recognizes if a management task associated with the received management signal is executed as a result of the other process, whereby double execution of the task is being avoided (Col 7, lines 23-28, Col 8, lines 15-17). The recitation a method of managing an optical network element has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

8.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kanekar as applied to claim 1 above, and further in view of Bruck.

Claim 3

11. Kanekar did not teach the network element is arranged in a manner such that, in use, the management signal is received as an e-mail message transmitted using the standard IP protocols. Bruck teaches that servers can be used to provide and manage access to Mail servers (Col 1, lines 38) and that the data handled by the server cluster follows the IP protocols (Col 7, lines 31-33). It is an objective of Bruck's invention to provide reliable network communication (Col 2, lines 63-64). Kanekar's invention relates to facilitating communication between users of a network (Col 1, lines 15-19) and providing a reliable network (Col 1, line 52). Modifying Kanekar's invention to include the above feature would accomplish these objectives by increasing the number of network users that could reliably communicate with each other. It is for this reason

that one skill in the art at the time of invention would be motivated to make this modification to Kanekar's invention.

Claim 4

12. Kanekar did not teach that the management signal is received as an HTTP server incorporated in the network element accessible via a conventional web browser. Bruck teaches that the management signal is received as an HTTP server (Col 6, lines 55-57) incorporated in the network element accessible via a conventional web browser (Col 1, lines 33-35, lines 59-60). Kanekar's invention relates to facilitating communication between users of a network (Col 1, lines 15-19) and providing a reliable network (Col 1, line 52). It is also an objective of Bruck's invention to provide reliable network communication (Col 2, lines 63-64). Modifying Kanekar's invention to include the above mention features would increase the number of network users that could communicate with each other and the reliability of their communication. It is for this reason that one skill in the art at the time of invention would be motivated to make this modification to Kanekar's invention.

13. Claims 6, 8, and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Kanenar as applied to claim 1 above, and further in view of de Boer.

Claim 6

14. Kanekar did not teach the management signal could be received from different paths along an optical network to which the network element is connected. De Boer teaches that the management signal can be received from different paths along an optical network to which the network element is connected (Fig 1). It is an objective of Kanekar to reduce the switch over time upon failure of a router (Col 2, lines 8-9).

Modifying Kanekar's invention to allow the management signal to be received from different paths would accomplish this objective. It is for this reason that one skill in the art at the time of invention would be motivated to make this modification to Kanekar's invention.

Claim 8

15. Kanekar did not teach about the optical network is a ring network, the different paths comprise transmission paths along opposite directions of the ring network. De Boer teaches that the optical network is a ring network, the different paths comprise transmission paths along opposite directions of the ring network (Col 3, lines 11-12), Fig 1. It is an objective of Kanekar to reduce the switch over time upon failure of a router (Col 2, lines 8-9) and provide a reliable network (Col 1, line 52). Modifying Kanekar's invention to include the above features would accomplish those objectives of Kanekar because reliability and reduced switch over time are benefits of a ring network (Col 2, lines 18-21). It is for this reason that one skill in the art at the time of invention would be motivated to make this modification to Kanekar's invention.

Claim 11

16. Kanekar did not teach about an optical network comprising one or more optical network elements. De Boer did teach about an optical network comprising one or more optical network elements(Fig 1). One skill in the art would be motivated to make the modifications to Kanekar's invention for the same reasons discussed in Claim 8 above.

17. Claims 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kanekar as applied to claim 1 above, and further in view of Attanasio.

Claim 7

18. Kanekar did not teach about the management signal and a duplicate management signal are received at the management unit from the different paths substantially simultaneously, and the management unit is further arranged, in use, to process only one of the management signal and the duplicate management signal. Attanasio teaches about the management signal and a duplicate management signal are received at the management unit (Fig 10, items 1050 and 1030) from the different paths substantially simultaneously, and the management unit is further arranged, in use, to process only one of the management signal and the duplicate management signal (Fig 10, Paragraph [0054], lines 2-5, Paragraph [0051], lines 1-3). It is an objective of


Kanekar to reduce the switch over time upon failure of a router (Col 2, lines 8-9) and provide a reliable network (Col 1, line 52). It is an objective of Attanasio to reduce the aggregate delay of the remote service requests (Paragraph [0009], lines 1-2) and that network clients experience no interruptions of service during the take over operation as a result of a failed connection (Paragraph [0010], lines 2-4). Modifying Kanekar's invention to include the above features of Attanasio's invention would accomplish those objectives of Kanekar invention. It is for this reason that one skilled in the art at the time of invention would be motivated to make the above-mentioned modifications.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl M. Reid whose telephone number is 703 305-0435. The examiner can normally be reached on Mon- Fri (7-4:30) 2nd & 5th Fridays off.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Harvey can be reached on (703)305-9705. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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